

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0786, Maureen Bacon v. Town of Enfield, the court on June 5, 2007, issued the following order:

The petitioner, Maureen Bacon, appeals an order of the trial court denying her appeal from a decision of the Enfield Zoning Board of Adjustment (ZBA). See RSA 677:6. She argues that the ZBA erred in construing Article IV, Section 413 of the Enfield Zoning Ordinance. We affirm.

Article IV, Section 413 provides:

Any and all non-conforming uses of land, buildings or structures which are abandoned, discontinued or vacated or which are partially or wholly destroyed by reason of any cause whatsoever, including obsolescence, fire, explosion, storm or other acts of God, may be resumed or restored and operated in their former non-conformity if same is started within one year of the disruption and completed within twelve (12) months thereafter.

The replacement uses (or buildings and structures, if applicable) must be in the same location, and of the same dimensions as before the damage, unless change of location or dimensions would make the replacement more conforming.

The petitioner sought to “abandon, discontinue or vacate” an existing 24 square foot section of deck and the shed located thereon and replace it with a smaller shed on the side of her house. The ZBA denied the request and the superior court affirmed the denial, finding that voluntary removal of only a portion of a structure would not make it more conforming and would not qualify it for relocation, that relocation was authorized only where the structure was damaged and that the petitioner’s request was inconsistent with the overall purpose of the zoning ordinance to reduce non-conformity.

The interpretation of a municipal ordinance or regulation is a question of law, which we review de novo. See Harrington v. Town of Warner, 152 N.H. 74, 79 (2005). The traditional rules of statutory construction generally govern our review; we construe the words and phrases of a regulation according to the common and approved usage of the language. See id. When the language of a regulation is plain and unambiguous, we need not look beyond it for further indications of legislative intent. See id. Moreover, we will not guess what the drafters of the regulation might have intended, or add words that they did not see fit to include. Id.

We need not determine whether Section 413 applies to the voluntary removal of a structure. In this case, where the petitioner sought to remove only a portion of the non-conforming structure, the ZBA and the trial court correctly concluded that the proposed change in location would not make the replacement location more conforming.

Affirmed.

DALIANIS, DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**